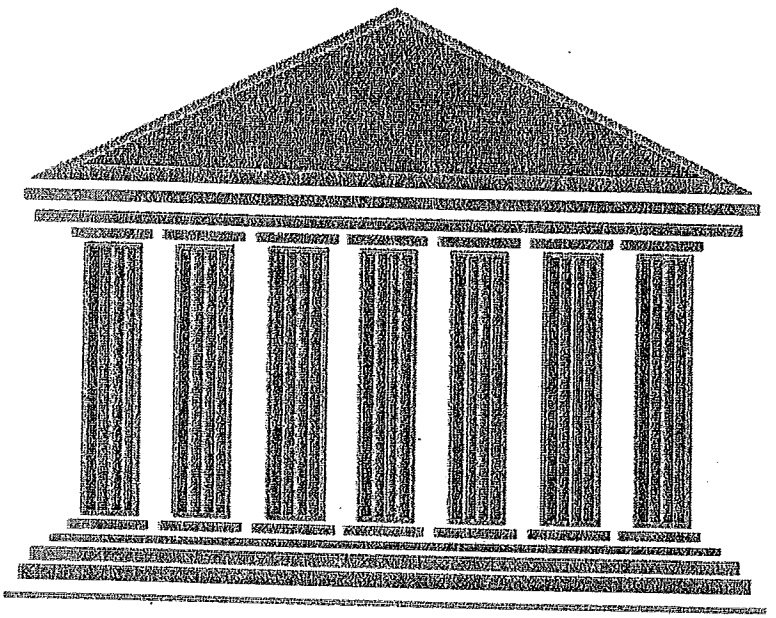

THE *PRO SE* HANDBOOK

A Guide to Representing Yourself in the Hamilton County Circuit and Superior Courts

A Public Service of the Hamilton County Circuit and Superior Courts and the Hamilton County Bar Association

• January 2011 •

ATTENTION!

This handbook is provided as a public service to alert you to some of the problems that you can expect to encounter while representing yourself in the Hamilton County Circuit and Superior Courts in a civil matter.

THIS HANDBOOK IS NOT INTENDED TO BE A SUBSTITUTE FOR THE ADVICE AND ASSISTANCE OF A LAWYER. On the contrary, one of the most important messages of the handbook is that your chances of obtaining a good result are better if you are represented by a lawyer than if you are representing yourself.

THIS HANDBOOK DOES NOT CONTAIN LEGAL ADVICE FOR YOUR LEGAL PROCEEDING. The handbook does not tell you how to solve your legal problems.

THIS HANDBOOK MAY BECOME OUT-OF-DATE. The law is constantly changing. The statutes, ordinances, or court rules that are referred to in this handbook may have been changed or repealed since the handbook was written, or there may be new laws or rules that apply to your case. There is no substitute for checking to make sure that the sources of law that you intend to rely on -- for example, statutes, ordinances, regulations, court rules, and court decisions -- have not been changed since you last looked at them.

THIS HANDBOOK MAY CONTAIN INACCURATE LEGAL INFORMATION. Neither the Hamilton County Circuit and Superior Courts, the Hamilton County Bar Association, nor the authors or editors of this handbook are responsible for the completeness, adequacy, or accuracy of the information contained in the handbook. **IT IS YOUR RESPONSIBILITY ALONE TO VERIFY THE INFORMATION THAT YOU FIND IN THIS HANDBOOK AND TO MAKE SURE THAT THERE HAVE BEEN NO RECENT CHANGES IN THE APPLICABLE RULES OR LAWS.**

If you find any errors in the handbook, or if you would like to suggest any improvements for future editions, please write to: Pro Se Handbook, c/o Administrator of Courts, Hamilton County Circuit and Superior Courts, One Hamilton County Square, Suite 313, Noblesville, IN 46060.

2011 - Edition 1

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REPRESENTING YOURSELF IN HAMILTON COUNTY CIRCUIT AND SUPERIOR COURTS

The "Pro Se" Handbook

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1. GENERAL INFORMATION

This handbook is designed to help you to represent yourself in court (especially in the Hamilton County Circuit and Superior Courts). The legal term for representing yourself is "acting pro se," which means "acting for oneself." If you decide to represent yourself, you may hear lawyers or court personnel refer to you as a "pro se."

1.1 The Decision to Represent Yourself

As a "pro se," the first thing to do is to ask yourself, "Am I sure that I want to represent myself?" In answering that question, you must keep this in mind: **YOU WILL BE HELD TO THE STANDARDS OF A LAWYER.** You should follow all the rules that apply to lawyers. If you fail to follow the rules, you may be subject to the same penalties as if you were a lawyer.

Although the court personnel, such as the court's staff and the court clerk' staff, can answer some questions about the court's procedures, the law prohibits court personnel from giving you legal advice because they are not trained to do so.

There is an old saying: "The person who represents himself has a fool for a client." There are at least two reasons for this saying. First, you will find that the legal process is complex and difficult to understand. The person on the other side of your case will probably be represented by a lawyer. Without a lawyer, you will be at a disadvantage. Second, you have a personal interest in the outcome of your case, which will deprive you of the objectivity you need to present your case effectively in court.

You improve your chances of winning your case when you have a lawyer to represent you. So, you should make the decision to represent yourself carefully.

1.2 Where to Find a Lawyer

If you cannot afford to hire a lawyer, or if you don't know which lawyer to ask to represent you, there are several places where you might be able to get help. In sections 1.6.3 and 5.1 this handbook lists some of the places where you may find a lawyer or you can call the Hamilton County Bar Association, the Indianapolis Bar Association, or the Indiana State Bar Association in Indianapolis for information about referral to a lawyer.

Before you decide to represent yourself, you owe it to yourself to see if it is possible for you to obtain representation by a lawyer. Many lawyers will give you a free consultation in person or over the telephone.

1.3 About This Handbook

Although this handbook is designed to help you, it does not contain everything that you need to know – far from it. What happens in a courtroom is governed by many different things, including the official court rules, the practices of the particular judge, and the law that applies to the case. In section 1.5, there is a discussion of how to find out about the court rules, the practices of the judge, and the applicable law. This handbook is intended only to answer a few of the questions commonly asked by persons acting "pro se" and to suggest some sources of additional information.

Neither the Hamilton County Circuit and Superior Courts, the Hamilton County Bar Association, nor the author or editor of this handbook are responsible for the completeness, adequacy, or accuracy of the information contained in the handbook. **IT IS YOUR RESPONSIBILITY ALONE TO VERIFY THE INFORMATION THAT YOU FIND IN THIS HANDBOOK AND TO MAKE SURE THAT THERE HAVE BEEN NO RECENT CHANGES IN THE APPLICABLE RULES OR LAWS.**

This handbook contains **NO** information about cases in the U.S. District Courts, U.S. Bankruptcy Courts, Indiana Supreme Court, Indiana Court of Appeals, Indiana Tax Court, Juvenile Courts, or Municipal Traffic Courts.

1.4 Who Can Act "Pro Se"?

In a civil case, you will almost always be permitted to represent yourself, but you must be prepared and on time and you must comply with the court rules. Just as a lawyer may be penalized for being late or unprepared, you can be penalized if you are late or unprepared.

If "you" are a corporation, however, you must be represented in court by a lawyer. A non-lawyer employee, officer, director, or shareholder of a corporation is not permitted to represent the corporation (however, in a small claims court, if the claim does not exceed $1,500, a non-lawyer is permitted to represent a corporation). The reason for this is that representing someone else in court is practicing law, and only lawyers are permitted to practice law.

If you are the defendant in a criminal case, the situation is more complicated. The court cannot allow you to represent yourself unless your decision not to have a lawyer has been made voluntarily and with full knowledge of the importance of the decision. Therefore, the judge will question you about why you want to represent yourself, to make sure that you fully understand what you are doing. This is done for your protection.

1.5 The Court Rules and the Law -- Where to Find Them

In representing yourself, one of the most important things that you must do is to become familiar with the court rules and the law that applies to your case. If you fail to follow the court rules, you may lose your motion or trial.

1.5.1 Court Rules

1.5.1.1 Indiana Court Rules-State

There are two kinds of court rules that you need to be concerned about. First, there is the Indiana Rules of Court-State (Vol. I). These court rules are the same throughout the state; in other words, these rules do not change from one county or city to another. Thus, the Indiana Rules of Court-State (Vol. I) will govern a civil case tried in Circuit or Superior Court in Noblesville, Indianapolis, or anywhere else in the state. However, the Indiana Rules of Court-State (Vol. I) does consist of several sets of rules, depending on what your case is about and which court you are in. For example, there is one set of rules for civil cases and another set for criminal cases. There is still another set of rules for civil cases in Small Claims Courts.

The Indiana Rules of Court-State (Vol. I) are published every year in paperback books and can be found in every law library in the state. Call the Bar Association in your area to find out the location of the nearest law library. The public library may also contain the other legal materials described below. When you are reading the Indiana Rules of Court-State (Vol. I), make sure that you are looking at the current edition. The year is printed on the cover. The Indiana Rules of Court-State (Vol. I) are also available online at www.in.gov/judiciary/rules/.

1.5.1.2 Hamilton County Court Rules-Local Rules

In addition to the Indiana Rules of Court-State (Vol. I), most courts have "local rules." These rules sometimes contain additional requirements not found in the Indiana Rules of Court-State (Vol. I), or they may tell you how to comply with the Indiana Rules of Court-State (Vol. I) in that particular court. You will find the local rules for Hamilton County in Indiana Rules of Court-Local (Vol. III). It is important to follow a court's local rules. To find out the local rules of a particular court, go to a law library (or possibly a public library) in the area and ask for a copy to review and photocopy. If there is no library available to you, ask the court clerk how to get a copy of the local court rules. Hamilton County's local rules can also be found online at www.in.gov/judiciary/rules/local/.

In addition to the formal local rules, individual judges often have their own ways of doing things. If you know which judge is going to be presiding over your trial or hearing, it can sometimes be helpful to talk to the judge's bailiff, or staff, to find out how the judge likes things to be done in his or her courtroom. It might also be helpful for you to sit in on someone else's case in that judge's courtroom so that you can see for yourself how the judge operates. Remember to always be respectful when addressing court staff.

1.5.1.3 The Rules of Evidence

There is a special set of court rules that are extremely important in all trials (except in small claims court). These court rules are the Rules of Evidence. The courts follow the rules of evidence to determine which kind of evidence to permit at trial and which kind of evidence to exclude.

The Rules of Evidence are part of the Indiana Rules of Court-State (Vol. I). As we discussed in section 1.5.1.1, the Indiana Rules of Court-State (Vol. I) and Indiana Rules of Court-Local (Vol. III) are published in two volumes every year.

Although the Rules of Evidence apply to most court proceedings, there are some proceedings to which they do not apply. For example, they do not usually apply to small claims court or to some parts of criminal cases, such as preliminary hearings and sentencing.

Before your case goes to trial, it might be helpful for you to make a list of all the facts that you intend to prove at trial, together with all the evidence that you intend to submit to the court in order to prove those facts. Once you have made that list, you should read over the Rules of Evidence and see if any of your evidence is prohibited by the rules. If it is, then you will have to find some other evidence to take its place. Otherwise, you will not be able to prove that part of your case.

Although the Rules of Evidence are complicated and can be frustrating to try to understand, even for lawyers, there is a good reason for every one of them. They are designed to make it more likely that the truth will come out at trial. They are not arbitrary "technicalities."

1.5.2 The Law of Your Case

Besides knowing the court rules, you must also know the law that applies to your case. The law of your case will depend on what your case is about. Unfortunately, it is often difficult to find out what the law is. One of the reasons for this is that the law is created by all the different branches of the government -- namely, the legislature, the executive (for example, the governor or a state agency), and the courts. The legislature might pass a law, called a "statute," and a government agency might then adopt regulations to enforce the statute; later, the courts might be called upon to decide what the statute or the regulations mean in a particular case.

In addition, all statutes and regulations must be consistent with the state and federal constitutions. After deciding what a particular statute or regulation means, the courts sometimes decide that it is unconstitutional -- for example, because it violates an individual's constitutional rights. Besides the federal constitution, federal law also consists of federal statutes and regulations and the decisions of the federal courts, but those are beyond the scope of this handbook.

Finally, there are many cases for which there is no statute or regulation that applies. Those cases are decided by the courts on the basis of what is called the "common law," which consists of the decisions of other courts in earlier, similar cases.

Therefore, in order to find out "what the law is" in your case, you have to find out (1) whether the state legislature has passed a statute -- or the city or county council has passed an ordinance -- that applies to your case; (2) whether a government agency has adopted regulations to enforce the statute; (3) whether the courts have interpreted the statute, ordinance, or regulation; (4) whether the statute, ordinance, or regulation is consistent with the state and federal constitutions; and (5) if there is no applicable statute, ordinance, or regulation, whether earlier decisions of the courts in similar cases have established rules of "common law" that apply to your case. If that sounds like a lot of work, you're right.

What now follows is a discussion of how to find out what the law is. This will be a very brief and incomplete description. Long books have been written about how to find out what the law is -- for example, Effective Legal Research, by Price, Bitner, and Bysiewicz, which you might be able to find in your local law library or public library.

1.5.2.1 Statutes, Regulations, and Ordinances

As we discussed in the previous section, the legislature passes statutes, and government agencies adopt regulations to carry out those statutes. The statutes passed by the Indiana General Assembly are collected in a series of books called the Indiana Code or "IC" for short. There is an edition of the IC called the Annotated Indiana Code, which also contains a brief summary of court decisions (also called "cases") that have interpreted the statutes. If you can, you should use the Annotated Indiana Code. In the back of each volume of the Annotated Indiana Code is a small booklet, called the "pocket part," which contains the most recent version of the statutes and a summary of the most recent cases.

The law is constantly changing. For that reason, it is absolutely essential that you check the pocket part to make sure that you have the most recent information. If the legislature has been in session since the pocket part was published, even the pocket part might not be up-to-date; there are paperback volumes at the end of the Annotated Indiana Code that describe the legislature's most recent actions.

To find. the particular statute that you are looking for, the best place to start is usually the index, which consists of several volumes at the end of the Annotated Indiana Code series. The index is arranged alphabetically by subject.

Like almost all the books described here, the Annotated Indiana Code can be found in the nearest public law library. Call the local bar association to find out where it is. The librarian at the law library might be able to help you find the books that you are looking for. You can also access the Indiana Code online at the State Legislature's website, www.in.gov/legislative/ic/code/.

The regulations that have been adopted by the different state agencies, such as the Department of Labor, are collected in a series of volumes called the Indiana Administrative Code, or the "IAC" for short. The IAC is regularly updated by the Indiana Register. Both the IAC and the Indiana Register contain indexes to help you find the relevant pages. You can find the IAC online at www.in.gov/legislative/iac/.

If your case involves the law of a county or a city, rather than the law of the state, you will have to check the county or city "ordinances," which are similar to state statutes, but have been adopted by the county council or city council, rather than by the state legislature. The best place to find county or city ordinances is either the local public law library or the office of the county or city clerk.

1.5.2.2 Case Law

The law that applies to your case is also determined by what the courts have decided in earlier cases. Like the state statutes and regulations, the decisions of the Indiana courts are published in a series of volumes. The decisions of the Indiana Supreme Court, Indiana Court of Appeals, and Indiana Tax Court are published in a series called the Northeastern Reporter Second Series, or the "N.E.2d" for short. The series of books can be found in a public law library.

If your case involves a state statute, the easiest way to find the decisions that apply to your case is to check the case summaries in the Annotated Indiana Code (discussed in section 1.5.2.1 above), which will give you the volume and page number of each decision summarized. Another way to find relevant cases, especially if no statute or regulation applies to your case, is to use a publication called the Indiana Digest 2d, which is yet another series of volumes. Like the Annotated Indiana Code, the Indiana Digest 2d contains summaries of court decisions. Unlike the Annotated Indiana Code, the Indiana Digest 2d is organized by subject matter and does not contain the state statutes. The Digest can also be found in a public law library.

Once you have found one or more court decisions that seem relevant to your case, it is important to make sure that those decisions have not been modified or "overruled" by any later cases. The way to do that is by using a publication called Shepard's Citations, which can also be found in a public law library. You will probably need to ask a law librarian to explain how to use Shepard's Citations.

It is a good idea to make photocopies of any statutes, regulations, ordinances, or court decisions that you think are important to your case, since it is usually necessary to refer back to them later.

1.5.2.3 The State and Federal Constitutions

The United States Constitution is "the supreme law of the land." Consequently, all statutes and regulations must be consistent with the U.S. Constitution. This is true regardless of whether those statutes or regulations have been adopted by the U.S. Congress, by the legislature of this or any other state, or by any government agency.

The Constitution of the State of Indiana is the supreme law of this state. All state statutes, local government ordinances, and state or local government regulations must be consistent with the state constitution.

If a statute, ordinance, or regulation appears to hurt your case -- especially if it seems to violate your individual rights -- you should check to see whether it is constitutional. You should check both the state constitution and the federal constitution, because all laws in this state must be consistent with both.

Both the Indiana State Constitution and the U.S. Constitution are printed in special volumes of the Annotated Indiana Code (discussed in section 1.5.2.1). The Annotated Indiana Code contains not only the text of the state constitution but also brief summaries of court decisions that have interpreted each provision of the state constitution. In the back of each volume of the Annotated Indiana Code is a small booklet, called the "pocket part," which contains any recent amendments to the constitution (though the constitution is rarely changed) and a summary of the most recent cases interpreting it.

Although the Annotated Indiana Code also contains the text of the U.S. Constitution, it does not provide summaries of the cases that have interpreted the U.S. Constitution. You may find summaries of cases that have interpreted the U.S. Constitution by checking a series of volumes called the U.S. Code Annotated (U.S.C.A.). The U.S.C.A. can be found in law libraries. The U.S.C.A. has several volumes that contain the text of the U.S. Constitution and summaries of cases that have interpreted it. Each volume also has a pocket part in the back, which you should check for the most recent cases.

1.6 Other Sources of Useful Information

1.6.1 The Clerk of Court

A good source of information is the Court Clerk's Office. You should keep in mind, though, that court clerk's staff and court personnel are prohibited from giving legal advice, such as interpreting the law or the court rules or filling out legal forms for you. Court personnel are not trained to give legal advice and could unintentionally mislead you about the law. The Court Clerk's Office can be helpful, however, in explaining some court procedures, as long as it doesn't require them to interpret the court rules for you, or in telling you where to go for additional information. You should try to avoid times when the clerk's office is unusually busy, so that the office staff will have time to help you.

One of the most valuable services of the clerk's office is to allow you to inspect the court file in your case. In Hamilton County, you may find the Court Clerk's Office on first floor of the Hamilton County Government and Judicial Center located at One Hamilton County Square, Noblesville, IN 46060 (on the corner of 8th Street and Conner Street/SR32).

1.6.2 Indiana Practice

Another useful publication is a series of volumes called Indiana Practice, which can also be found in most law libraries. Volumes 21 and 22 of the series discuss practice and procedure in civil cases. Volumes 16 and 16B discuss practice and procedure in criminal cases. Each volume may contain a "pocket part" inside the back cover, which you should check for the most up-to-date information.

1.6.3 State or Local Bar Association

The Indiana State Bar Association has its offices in Indianapolis and has numerous links and other information on its website, www.inbar.org, that you might find helpful, depending on the nature of your case.

You also might find it helpful, depending on the nature of your case, to check the Hamilton County Bar Association's website, hamiltoncountybar.com, or the Indianapolis Bar Association's website, www.indybar.org. The Indianapolis Bar Association Lawyer Referral Service can also provide lawyer referrals for other languages: call 317-269-2222 or go to their website, www.indybar.org/Public-Need-Lawyer.aspx.

1.6.4 Attorney General's Office

The Indiana Attorney General's Office publishes consumer education materials and has various links on its website, www.in.gov/attorneygeneral/, related to consumer problems.

1.6.5 Indiana Supreme Court

For general information about Indiana courts, the Indiana Supreme Court's website, www.in.gov/judiciary/citizens/, is designed to provide citizens with information about Indiana Courts and resources for interaction with Indiana Courts. You can find links for helpful information on legal representation, research, and forms at this website.

1.6.6 Public Library

Depending on the nature of your case, your local public library might have helpful information. The Public Library has computers that you may use to download forms and other information from web sites listed in this handbook. Ask a librarian for help if you can't find what you're looking for.

The Ruth Lilly Law Library at the IU School of Law-Indianapolis, 530 West New York Street, Indianapolis, is another source of helpful information. The library's website is indylaw.indiana.edu/library/.

1.7 ALWAYS GIVE PROPER NOTICE TO ALL PARTIES

Whenever you file a document with the court (including "motion papers" as explained in section 2.1.4), you must mail or deliver a copy of the document to all other "parties" in your case (that is, to all other persons who are named in the lawsuit, either on your side or the other side). If a party is represented by a lawyer, you must mail or deliver that party's copy of the document to the lawyer. When you have provided notice according to the court rules, you have given "proper notice" to the other parties.

The court rules and certain statutes explain exactly how and when to give notice to the other parties. The method and timing of giving notice can be different for different kinds of cases. In most cases, the court rules do not permit you to give notice to the other parties by delivering the documents to them yourself -- some other adult must do it for you. You may use a commercial messenger service to deliver your notices. It is extremely important that proper notice be given, otherwise, the court might refuse to grant your request or a higher court might reverse the action of a lower court, if the lower court took action without proper notice.

If you are beginning a lawsuit, you must provide written notice to an opposing party by "service of process." Service of process is the formal notice to the other side to respond to your lawsuit. The court rules, Rules of Trial Procedure 4 and 5, Indiana Rules of Court-State (Vol. I), explain how and when to serve process. Service of process is the most important notice in the lawsuit, so make sure it's done right. You may use a commercial messenger service to serve process or deliver notices. A commercial messenger service will provide you with an affidavit of service upon completion of service of process for filing with the Clerk of Court.

1.8 ALWAYS BE PREPARED AND ON TIME

The state court system is expensive to run, and the cost is paid almost entirely by our tax dollars. If someone shows up in court late or unprepared or fails to provide the opposing party with proper documents in advance according to the court rules, the court proceedings may be delayed. When court proceedings are delayed tax dollars are wasted -- and the judge is likely to be annoyed. Therefore, **ALWAYS BE PREPARED AND ON TIME**. If you are going to be late, call the court staff or the bailiff. Phone numbers for the courts can be found in the County Government section of the local phone book.

2. CIVIL CASES

There are two general kinds of cases: criminal and civil. Criminal cases are cases in which a defendant is being prosecuted by the state or local government for allegedly committing a crime. All other cases are civil cases. Civil cases most often involve claims for money damages or disputes over property. In this handbook, several special kinds of civil cases are discussed separately. Those are "family law" cases, name changes, domestic violence cases, small claims court cases, "probate" cases, and "guardianship" cases. They are discussed in section 2.4 of this handbook.

Sections 2.1 through 2.3 of the handbook apply to all civil cases (except small claims court cases), not just to the special cases discussed in section 2.4.

2.1 Procedure Before Trial

2.1.1 Commencement of the Lawsuit

Most civil lawsuits begin when the plaintiff files (in the office of the court clerk) and serves upon the defendant a "summons" and "complaint." This procedure is called "service of process" and is described in the court rules, Rules of Trial Procedure 4 and 5, Indiana Rules of Court-State (Vol. I), which explain how and when to serve process. The summons commands the defendant to respond to the claim in writing in court. The complaint contains a statement of the plaintiffs claims against the defendant and the request for relief.

After the plaintiff arranges for services of process, the defendant must respond to the plaintiff's claims within a certain number of days. The exact number is stated in the applicable court rules and in the summons. Generally, the defendant must respond within twenty (20) days of receiving the summons and complaint. The defendant does so by filing a "notice of appearance" or an "answer" with the court clerk and serving a copy of it on the plaintiff (or, if the plaintiff is represented by a lawyer, on the plaintiffs lawyer). The notice of appearance shows the appearance of an attorney on behalf of the defendant or it shows the individual acting on his or her own behalf as a pro se litigant. The answer contains a statement of the defendant's responses to each of the plaintiffs claims.

The defendant may include with the answer a "counterclaim" containing claims that the defendant wishes to make against the plaintiff. The defendant does not have to file a counterclaim against the plaintiff unless the defendant's claims are based on the same dispute that the plaintiffs claims are based on; this is explained in Rules of Trial Procedure 13, Indiana Rules of Court-State (Vol. I). The defendant must include any counterclaims he or she has against the plaintiff if the claims arose out of the same transaction or occurrence. If the defendant fails to assert such counterclaims in his or her answer then the defendant may lose the opportunity to assert those claims at a later date. Therefore, if the defendant has a claim that arose out of the

same incident as the original claim against the plaintiff who has filed suit then the defendant must file a counterclaim. Finally, if the defendant has filed a counterclaim, the plaintiff must respond to it by filing and serving a "reply."

If the defendant fails to file an answer with the Clerk of Court and serve it upon the opposing party or attorney within 20 days, the plaintiff may bring a Motion for Default against the defendant. The Motion for Default is a civil motion, which requires notice to the attorney or Defendant, if he or she filed a notice of appearance, but which does not require a notice to the Defendant, if he or she filed no notice of appearance or answer.

There are special kinds of civil cases -- such as family law cases, probate cases, and guardianship cases -- that are commenced by filing a "petition," rather than a "complaint." You should check the applicable statutes and court rules for details, as well as online form providers.

2.1.2 Civil Trial

Upon filing a civil case in Hamilton County, the Clerk of Court assigns the case to a trial judge. The trial judge will set conferences, hearings, and trial dates on his or her own motion or upon the request of any party.

2.1.3 Discovery

The court rules provide you with an opportunity to find out the facts that the opposing party intends to prove at trial and the evidence that the opposing party intends to submit to the court in order to prove those facts. In the same way, the rules provide the opposing party with an opportunity to find out about your evidence and the facts that you intend to prove. This process is called "discovery."

The court rules provide several different methods of discovery. The most common and least expensive form of discovery is "interrogatories," which are written questions that you submit to the other party, who must answer the questions in writing.

Another common form of discovery is the "deposition," where a party may subpoena any person with knowledge of relevant facts (including persons who are not parties to the lawsuit) to appear at a particular time and place, and question that person about what he or she knows. Since the questions and answers of a deposition must be recorded in some way, and since they are usually recorded by a paid court reporter, depositions can be expensive.

The court rules that regulate the discovery process are Rules of Trial Procedure 26 through 37, Indiana Rules of Court-State (Vol. I), and Hamilton County Local Rule 307, Indiana Rules of Court-Local (Vol. III). If you must respond to discovery, you should answer deposition questions or interrogatories completely and honestly. For interrogatories, you should supplement your answers as you obtain new information.

Discovery supplements other exchanges of information already required in the process leading toward trial. Discovery is one of the most important parts of a civil lawsuit. It helps to prevent either party from surprising the other at trial with evidence that has been kept secret. As a result, trials go more smoothly and most cases are settled even before trial begins.

2.1.4 Civil Motions

Before the actual trial of a lawsuit, one or more of the parties may ask the court to take some action or make some decision about the case. For example, the plaintiff might want the defendant to reveal certain information that the plaintiff requested during the discovery process. The defendant might think that the plaintiff is not entitled to that information. In order to resolve the dispute, the plaintiff must make a "motion" to the court, asking the court to order the defendant to reveal the requested information.

Civil motions must have separate sections to state the following: the relief requested, a statement of facts, a statement of issues, the evidence relied upon, the legal authority for the motion, and must have an attached copy of the proposed order. You must file the motion with the court clerk, together with a document, called a "Chronological Case Summary," or "CCS" for short, which contains a brief summary of the motion and the documents that have been filed. Rules of Trial Procedure 6, Indiana Rules of Court-State (Vol. I), requires that you file most civil motions with the court and arrange for delivery to the opposing party at least five (5) court days (that is, not counting weekends, holidays, and not counting the date of service, but counting the date of the hearing) before the date of the hearing.

Generally, the court will hear civil motions without oral argument, except for Summary Judgment motions, Family Law motions, Ex Parte motions, and dispositive motions. A "dispositive" motion is a motion, which ends all or a substantial part of the case in favor of one party. If you want oral argument for a civil motion, you must request it.

In most cases, you must file the original and one copy of a civil motion and any attached documents with the Clerk of Court, and deliver one copy to the opposing party or the attorney for the opposing party, if he or she has an attorney. The Clerk of Court will place the original and copy in the court file and will give the file to the trial judge to read before the hearing date.

For motions for which the court allows oral argument, you should be sure to show up early for the hearing and tell the courtroom staff that you are there. Then, listen for your case to be called by the judge. If the party making the motion fails to show up at the time of the hearing, the court will strike the motion from the court's calendar and the moving party will have to request the hearing again. If the party opposing the motion fails to show up, the court will not strike the motion, nor will the court automatically grant the motion; instead, the judge will decide what action is appropriate.

2.2 Trial

2.2.1 An Overview

In order to find out how trials are handled in a particular court, it is essential that you read and become familiar with all the applicable court rules (see section 1.5.1).

Most courts require each party to prepare a written document called a "trial brief," which should clearly and briefly state the facts that the party intends to prove and the legal arguments that support the party's position. More information regarding trial briefs can be found in books such as The Winning Brief: 100 tips for Persuasive Briefing in Trial and Appellate Courts, by Bryan Garner.

Most courts hold a Pre-Trial Conference, during which the judge sets the time for submission of trial briefs about five days in advance of trial. In addition, in jury trials, each party must present the judge with proposed instructions for the jury (see section 2.2.3 below).

The first step in the actual trial is for each party to give an "opening statement" about the facts that the party intends to prove. You should use the opening statement only to give the judge or the jury a preview of the evidence that you intend to present during the trial. You should not try to argue your case during the opening statement; your argument comes at the end of the case, after all the evidence has been presented and the judge has instructed the jury. The plaintiff is permitted to give an opening statement first, followed by the defendant.

After the opening statements are given, the plaintiff begins presenting evidence. The most common types of evidence are witnesses and exhibits (for example, photographs, relevant letters, bills, and other documents). Generally speaking, a witness by will be permitted to testify only about what the witness knows from his or her own personal knowledge, not about what someone else may have told the witness. However, there are exceptions to this rule, as explained in the rules of evidence (see section 1.5.1.3). After the plaintiff has questioned a witness ("direct examination"), the court will permit the defendant to ask his or her own questions ("cross-examination"). If any of the answers that the witness gives on cross-examination require further explanation, the court will permit the plaintiff to ask additional questions, which are within the scope of cross-examination ("re-direct examination"). The court will then permit the defendant to ask further questions ("re-cross-examination") -- and so on, until the witness's knowledge has been thoroughly explored.

If you want to object to a particular question that is asked by the other side, you must do so before the question is answered and you must be prepared to tell the judge the legal basis of your objection. For example, you may object to a question on the basis that it calls for hearsay evidence. You are not allowed to wait and see if you like the witness's answer before making your objection.

Prior to the Pre-Trial Conference, a party must submit a list of exhibits to the opposing party. Later, at the Pre-trial Conference, the court may rule on the objections to admission of an exhibit into evidence. Despite the pretrial preparation at the Pre-Trial Conference, which may declare the exhibit admissible, you must still present the exhibit through a witness capable of identifying the document in his or her testimony. If you want an exhibit (a document, for example) to be considered by the court, you must "offer" the exhibit "into evidence." Before doing so, you must "lay a foundation" for the exhibit by showing, usually through the testimony of a witness who is familiar with the exhibit, what the exhibit is and why it is important to the case.

After the plaintiffs evidence has been presented, the court will permit the defense to present its evidence. Just as the court permitted the defense to cross-examine the plaintiffs witnesses, the court will permit the plaintiff to cross-examine the defense witnesses. After the defense has presented all its evidence, the court will permit the plaintiff to respond to the defense's evidence by presenting additional evidence, if the plaintiff chooses, so long as it is not simply a repetition of the evidence that the plaintiff already presented earlier.

After all the evidence of both parties has been presented, the judge will instruct the jury, if the trial is by jury.

Each party is then permitted to give a "closing argument." As its name implies, the closing argument is the place for telling the jury (or the judge, if there is no jury) why the case should be decided in your favor. The plaintiff argues first, then the defendant, and lastly the court will permit the plaintiff to make a brief reply, called a "rebuttal," to the argument of the defendant. Then the judge or jury will consider the case and reach a decision. For a jury trial, the jury makes its decision by filling in a jury verdict, which is one of the jury instructions. For a bench trial, the judge makes his/her decision with oral findings, conclusions, and decisions. The judge may ask the prevailing party to reduce his decision to writing and present the documents to the court for approval at a later time.

If you want to find out more about trial techniques, a good reference book is the paperback Trial Techniques by Thomas A. Mauet, which can be found in some law libraries and bookstores. If you want to find out more about practice and procedure in civil cases in the state of Indiana, you should look at volumes 21 and 22 of the multi-volume series called Indiana Practice, which can be found in law libraries.

As we explained at the beginning of this handbook, you will be required at the trial of your case to obey all the rules and standards that apply to lawyers. The sections below discuss some common problem areas for persons who are representing themselves.

2.2.2 The Right to a Jury Trial

In many civil cases, each of the parties has a right to demand that the case be decided by a jury, rather than by a judge. In other words, if one of the parties demands a jury trial, and the case is one in which a jury trial may be demanded, then the case will be decided by a jury. It does not matter if the other parties do not want a jury trial.

If a party demands a jury trial, a judge will still preside over the trial. The judge will rule on motions, decide which evidence is admissible, and instruct the jury about the law that applies to your case. But the jury will decide the case and determine how much money, or other relief, if any, to award to a party.

Generally, in dissolution of marriage, paternity, and juvenile cases, no party has a right to a trial by jury.

If you intend to demand a jury trial, you must follow the court rules for doing so. You should read Rules of Trial Procedure 38, Indiana Rules of Court-State (Vol. I). If you fail to follow the court rules for demanding a jury trial -- especially if you wait too long before making the demand -- you risk losing your right to a jury trial. If you fail to make a jury demand on time, the court may conduct your trial without a jury.

2.2.3 Jury Instructions

If your case is going to be tried before a jury, the jury will decide the case, but the judge will first instruct the jury about the law that must govern their decisions. These instructions will have an important effect on the outcome of the case.

It is the responsibility of each party to prepare a set of proposed jury instructions and to present them to the judge before the trial. At the Pre-Trial Conference, the court will require that the parties exchange proposed jury instructions.

During the trial, the judge will decide which instructions should be given. Before instructing the jury, the judge will tell the parties which instructions have been chosen and will give each party an opportunity to make objections to those instructions. You may not challenge a jury instruction on appeal unless (1) you objected to it before the judge instructed the jury; (2) you explained the basis of your objection; and, in most cases, (3) you proposed a suitable alternative instruction.

In many cases, appropriate pattern jury instructions can be found in a volume entitled Indiana Pattern Civil Jury Instructions, which can be found in most law libraries. You should check the pocket part in the back of the volume for the most recent versions of the instructions. If you cannot find an appropriate instruction in the Indiana Pattern Civil Jury Instructions, you will have to draft one yourself, based on what you think the law is. Section 1.5.2 of this handbook discusses how to find the law that applies to your case.

You should check the court rules, including any local rules, to find out how many copies of your proposed instructions should be given to the judge at the beginning of trial and in what form they should be presented to the judge.

2.2.4 Jury Selection

If you are going to have a jury trial, one of the first steps at trial will be the selection of a jury. First, the judge will ask general questions of the prospective jurors. Next, under the judge's supervision, each party will be given a chance to question each prospective juror briefly in order to determine the juror's qualifications to serve in that particular case. Each party may question prospective jurors to determine if the juror can be fair and impartial in deciding your case. The questioning is referred to as "voir dire."

If the questioning reveals a specific reason why a juror is likely to be prejudiced in favor of one side or the other, a party may challenge that juror "for cause"; the judge will then decide whether the juror should be allowed to remain on the jury. There is no limit on the number of challenges "for cause" that a party may make, but challenges for cause should be made sparingly, because they are often rejected by the judge and they might leave the challenged juror feeling that you have attacked his or her integrity. For that reason, if a challenge for cause is rejected by the judge, the party who made the challenge should then use a "peremptory" challenge (explained in the next paragraph) to dismiss the challenged juror.

In addition to challenges for cause, each party is allowed a limited number of "peremptory" challenges. Peremptory challenges dismiss a certain number of jurors from the jury panel without giving any reason. The purpose of peremptory challenges is to permit each party to dismiss jurors who that party has a "feeling" might be prejudiced or unfavorable to his or her case. The number of peremptory challenges each party is entitled is determined by state statute. Under Rules of Trial Procedure 47, Indiana Rules of Court-State (Vol. I), each party may have three (3) peremptory challenges. However, before jury selection begins, you should make sure that you and the judge agree on the number of peremptory challenges to which you are entitled.

If a juror is dismissed from the jury after being challenged, that juror's place will be taken by another prospective juror, who may then be questioned. Before making either a peremptory challenge or a challenge for cause, you should keep in mind that the juror who replaces the one who is dismissed might be no better, and could be worse.

2.2.5 The Trial Record -- What You Need to Do

The Court arranges for a transcript of all trials. In most Courts, the court reporter makes a record, word- for-word, of everything that is said during the trial. In order to help make a clear record, you need to do the following:

A. Speak loudly and clearly. Identify yourself by name and address (including zip code) at the beginning of the trial.

B. When you call a witness, the first thing you should ask the witness to state his or her full name (spelling the last name, unless it is a common one) and complete address, including zip code.

C. When you intend to offer an exhibit into evidence, hand the exhibit to the court reporter and ask that it be marked for identification. The court reporter will then write a number on it, such as "Defendant's Exhibit Number 3." Always use that number when you are referring to the exhibit. The number will remain with the exhibit throughout the trial and any proceedings after the trial.

D. Return the exhibit to the court reporter when the witness has finished testifying about that exhibit. Never remove any exhibit from the courtroom. The court reporter must maintain absolute control over all the exhibits; otherwise, a mistrial could result, causing the parties to begin the trial again on another day.

E. Remember that an exhibit cannot be considered by the judge or the jury in deciding the case unless the exhibit has been "offered" and "admitted" into evidence. At any given time, the court reporter can tell you the status of any exhibit (that is, whether it has been admitted into evidence, been refused, or been withdrawn by the party who offered it). If you need that information, you should ask the court reporter for it. The court reporter is not permitted to remind you that an exhibit has not been admitted into evidence.

F. Use words, not gestures, to get your idea across. The court reporter cannot record gestures, and you may later need to rely on the written record to explain what you or a witness said. For example, a nod of the head is not enough; the witness should say "yes." If a witness is trying to describe the size of something, the witness should use words such as inches, feet, or yards.

G. Do not try to hand things directly to the judge. If you want the judge to examine or read something, hand it to the court reporter, who will then hand it to the judge.

H. Before your trial or hearing, make an outline of what you intend to prove or the points you intend to make. Take the outline with you into the courtroom, and refer to it when you need to. You might want to add this outline to your copy of your trial notebook along with questions for witnesses, outlines of your opening statement, and your closing argument. These techniques will make your presentation smoother and will reduce the chance of forgetting something. (This does not apply to witnesses; witnesses tend to be more believable if they can testify from memory). If you have time, it can also be helpful to rehearse your presentation at home or with a friend before you go to court.

2.2.6 Suggestions for Witnesses

If you are answering a question, you should understand the question before you answer. When in doubt, you should ask to have the questions repeated or explained.

When you answer a question, just answer the question that was asked. Do not add any comments that have nothing to do with the question. Otherwise, you are likely to irritate the judge or jury.

2.3 Procedure After Trial

Your job is not done when the trial is over. On the contrary, there are important things to be done after trial. The following list is not complete, but it includes some of your most important responsibilities. For additional information, you should consult the court rules.

2.3.1 The Trial Court's Decision

In order to be official, one of the parties must prepare a Judgment based upon the jury verdict or the judge's decision. A Judgment is not final until the judge signs it and a party files it with the court clerk. If the judge decided the case alone (a "bench trial"), the judge will often ask the prevailing party to prepare, in addition to the Judgment, written Findings of Fact and Conclusions of Law, based on what the judge said in his or her oral decision. The parties may purchase a transcript of the judge's decision from the court reporter to assist with the preparation of the Findings of Facts and Conclusions of Law and Judgment.

A copy of the Findings of Facts and Conclusions of Law and Judgment must be given to the losing party before being presented to the trial judge for approval. In that way, the losing party will have a chance to object to any parts that the losing party thinks are different from what the jury or the trial judge decided.

2.3.2 Notice of Appeal

If you want to appeal the decision of the trial court, you must file a written notice of appeal in the Office of the Court Clerk. It is not enough simply to tell the court or the other party in your case that you intend to appeal, even if your statement is recorded by the court reporter. The trial judge cannot provide legal advice to either party on how to appeal his or her decision.

THE NOTICE OF APPEAL MUST BE FILED ON TIME. There are no exceptions to this rule. If your written notice of appeal is filed late, your right to appeal is lost forever. In order to find out the time limit for filing a notice of appeal, you must check the applicable court rules. Under the Indiana Rules of Appellate Procedure 9, Indiana Rules of Court-State (Vol. I), the time for appeal from the trial court to the Indiana Court of Appeals is thirty (30) days from

the date of the entry of judgment or other final order of the trial court. To be safe, figure out the time limit for your case before the trial is over. Then you will know ahead of time how much time you have.

Usually, the written notice of appeal must be filed at the clerk's office of the trial court, but again, check the court rules. The rules will also tell you what the notice of appeal should say. If you want to appeal the decision of the trial court, you must pay a filing fee when you file the notice of appeal (you must pay the fee and file with the Clerk of the Indiana Court of Appeals located in the State House in Indianapolis), unless you have obtained a court order excusing you from paying the fee. If you are indigent -- that is, you don't have enough money, the court might excuse you from paying the filing fee. Again, you should check the court rules to find out how to ask the court to excuse you from paying the fee.

If you are appealing a decision of a trial court, the court rules that will apply to your appeal are the Indiana Rules of Appellate Procedure that are also printed in the Indiana Rules of Court-State (Vol. I), which can be found in most public law libraries. You should read the Indiana Rules of Appellate Procedure carefully, from beginning to end, as soon as you have decided to file a notice of appeal.

2.3.3 Return of Exhibits

The procedure for getting back the exhibits that were used at trial is described in the court rules. Generally, the court reporter will ask you to fill in a written form to state what should be done with your exhibits after the expiration of the period for appeals. If you appeal the case, the court will have to keep all of the exhibits until the appellate court completes the appeal and any retrial, if one is ordered. You MUST arrange to pick up your exhibits after the trial is completed.

2.4 Special Types of Civil Cases

2.4.1 Family Law Cases

The term "family law" refers to matters such as dissolution of marriage (formerly called divorce), parenting plan modification (formerly called custody), and parentage (formerly called paternity) and child support modifications.

You may find it difficult to represent yourself in a marriage dissolution, unless you have no opposition from your spouse. Even then, it would be worthwhile for you to consult a lawyer. To assist you with dissolution of marriage, there are several sources of extremely useful information.

First, the Indiana Supreme Court has a Self-Help Legal Center to assist people -- information can be found online at its website www.in.gov/judiciary/selfservice/.

In Hamilton County, there is a program called "Lawyers Helping Families" and you can obtain information about this particular program from the Heartland Pro Bono Council at 317-631-9410, Ext. 2267.

2.4.2 Domestic Violence

For assistance with the filing of request for Protective Orders in Hamilton County, contact Prevail, Inc., 1100 South 9th Street, Suite 100, Noblesville, IN 46060 (telephone at 317-773-6942). Prevail is a victim awareness and support program providing 24 hour, 7 day a week services free of charge.

2.4.3 Name Changes

Indiana law permits you to change your name by filing a petition, with a filing fee, in the court in the judicial district where you live. The petition for name change should state your current full name, the name you want it changed to, and the reasons for the change. The court will not permit you to change your name in order to avoid creditors. The court will not permit you to change your minor child's name without the joint petition of both father and mother.

You can ask to have your name changed as part of a marriage dissolution in the court. In that case, you do not have to file a separate petition or filing fee for the name change.

2.4.4 Probate Cases

Some Basic Facts About Probate. When a person dies, his or her real or personal property may have to go through a court-supervised process called "probate." The technical legal term for the deceased person is the "decedent." The purpose of probate is to transfer legal ownership of the decedent's property (called the decedent's "estate") to the persons who are the "beneficiaries" of the estate. Who those beneficiaries are depends both on the decedent's will, if there is one, and on the state probate statutes. The probate statutes are contained in Title 29 of the Indiana Code.

If the decedent has left a will, any person who has the will in his or her possession has a statutory duty to file the will with the Clerk of Court. If the decedent's estate has less than $50,000 worth of assets, not including the surviving spouse's community interest in any assets, it may qualify for a simplified probate process. If the decedent's estate includes real property, it will not qualify for the simplified probate process.

Not all of the decedent's property has to go through probate. For example, the following property does not: life insurance proceeds, when the decedent's estate is not the named beneficiary; joint bank accounts with right of survivorship, which automatically go to the surviving co-owner at death; and property that passes under a community property agreement.

What to Do. When the decedent left a will, the named Personal Representative should file a petition with the Court requesting that the court appoint him or her to serve as personal representative of the decedent's estate. When the decedent left no will, the next of kin should file the petition. The personal representative has the duty to distribute the assets of the estate according to the terms of the will or according to the laws of inheritance in the State of Indiana.

After the court appoints a personal representative, he or she must provide notice by mail and publication to all creditors. The personal representative must resolve or pay the valid claims of creditors from estate assets.

In addition to paying and resolving creditor's claims, the personal representative must prepare and file an inventory of assets, must file tax returns, and must manage the estate assets during the probate process.

After paying or resolving creditor's claims, the personal representative must distribute those assets to the proper beneficiaries under the law or under the terms of the will. Finally, the personal representative must file a declaration of completion or a detailed final account that the estate is completely administered, providing a notice to all heirs, so that any heir may raise objections at a hearing before the court.

2.4.5 Guardianship Cases

Some Basic Facts About Guardianship. If a person is unable to manage his or her own affairs, state law permits a court to appoint a guardian or a guardianship committee to manage that person's affairs. The person who is subject of the guardianship is called the "alleged incapacitated person," prior to a court decision on incapacity and "the ward" after a court decision of incapacity.

What to Do. An interested party may file a petition for appointment of guardian. At an initial hearing, the Court will appoint a Guardian ad Litem to visit the alleged incapacitated person to determine whether or not the individual needs a guardian and whether or not the proposed guardian is suitable. The Guardian ad Litem must submit a report to the court to assist the court to decide upon issues of capacity and extent of the proposed powers of the Guardian. The guardian's duties are similar to those of a personal representative. The guardian must prepare an inventory of the ward's assets, resolve the claims of any creditors, file any necessary tax returns, and manage the ward's assets. The guardian must file an annual report with the court.

2.4.6 Small Claims Court Cases

You should refer to the Hamilton County Small Claims Litigant's Booklet for information regarding small claims. The booklets and applicable forms are available on line at the County's website, www.hamiltoncounty.in.gov, or from the court staff at either Hamilton County Superior Court 4, 5, or 6.

3. CRIMINAL CASES

If you are charged with a crime for which you could be sentenced to jail or prison, you have a constitutional right to be represented by a lawyer. If you cannot afford to hire a lawyer on your own, the court will, if you ask, appoint a lawyer to represent you. In order to show that you cannot afford to hire a lawyer, you will have to provide the court with certain financial information, such as your income and living expenses; the court clerk will usually give you a form to fill out for that purpose. Since the law provides a lawyer at no expense to an indigent, accused person in a criminal case, this manual does not furnish information for this area of law.

4. TRAFFIC CASES

Hamilton County Superior Courts 4, 5, and 6 deal with traffic cases, and with the appeals from the municipal traffic courts in the County. Information regarding traffic cases is available on line at the County's website, www.hamiltoncounty.in.gov, or from the court staff at either Hamilton County Superior Court 4, 5, or 6.

Since practice in the municipal traffic courts is not the subject of this manual, it does not furnish information concerning these traffic cases.

5. PRACTICAL TIPS FOR HAMILTON COUNTY

5.1 Where to Find a Lawyer-Civil Cases

There are several agencies and organizations that might be able to help you find a lawyer or might be able to provide you with helpful information about your legal rights. They can be found at the Indiana Supreme Court's website at www.in.gov/judiciary/probono/attorneys/provider/dist8.html.

5.2 The Local Court Rules

You may find the local rules for the Hamilton County Courts in Indiana Rules of Court-Local (Vol. III). In addition, this paperback book contains the Local Rules for the courts for other counties in the state of Indiana. The Hamilton County Local Rules can also be found online at www.in.gov/judiciary/hamilton/.

5.3 Court Forms

Various court forms can be found at the Indiana Supreme Court's Self-Help Legal Center website, www.in.gov/judiciary/selfservice/forms, and court forms specifically for Hamilton County can be found at www.hamiltoncounty.in.gov/services.asp?id=5643. **THE COURT ASSUMES NO RESPONSIBILITIES AND ACCEPTS NO LIABILITY FOR ACTIONS TAKEN BY USERS OF THESE FORMS, INCLUDING RELIANCE ON THEIR CONTENTS. ALL FORMS ARE SUBJECT TO CONTINUAL REVISION.**

IT IS VERY IMPORTANT FOR YOU TO KNOW THAT WHEN YOU SIGN A COURT DOCUMENT, YOU PROVIDE INFORMATION TO THE COURT THAT MAY HELP OR HURT YOUR CASE. BEFORE YOU SIGN ANY COURT DOCUMENT OR GET INVOLVED WITH A COURT CASE, IT IS STRONGLY SUGGESTED THAT YOU TALK WITH A LAWYER TO MAKE SURE YOU KNOW YOUR RIGHTS AND ALL YOUR LEGAL OPTIONS.

6. CONCLUSION

Before you make a final decision to represent yourself, we urge you to re-read section 1.1 ("The Decision to Represent Yourself") at the beginning of this handbook. Whatever you decide to do, good luck!